EXHIBIT 4

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SUSANNA MIRKIN and BORIS MIRKIN,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

vs. No. 18 Civ. 2949(ARR) (RER)

XOOM ENERGY, LLC and XOOM ENERGY
NEW YORK, LLC,

Defendants.

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VIDEOTAPED DEPOSITION OF
SEABRON ADAMSON
Tuesday, November 8, 2022
10:06 a.m.
Veritext
101 Arch Street
Boston, Massachusetts 02110

Laurie K. Langer, RPR

opinion.
MR. WITTELS: But usually if you're making a statement you're taking it from there.
MR. MATTHEWS: Well, thank you for that guidance. I'm learning a lot.
A. Well, I think it's probably around page....
Q. I'll find it for you. How about paragraph 23B and 54.
A. 54. Right. Okay. Yes. Okay. Sorry, can you repeat your question.
Q. Please, if you would, so we don't have any confusion, if you would read both of those paragraphs. And then I'll --
MR. WITTELS: Into the record, --
Q. -- proceed.
MR. WITTELS: -- or?
MR. MATTHEWS: No. No. Just to himself.
A. (Witness reviewing.) Okay.
Q. Okay. What -- you, generally speaking, opine with reference to those prior period adjustments that you were unable to substantiate whether XOOM considered them in setting its rates; is that a fair statement?
A. Yeah. I mean, we looked at the information in the rate setting workbooks, which was very extensive.

There didn't seem to be any determination, calculation, amounts or anything associated with prior period adjustments as expected. I'm -- I was really kind of expecting there to be, if you were making prior period adjustments, to have some calculation of those, which I never saw. So that's kind of just what it's a reference to.
Q. Got it. So you're saying because XOOM didn't memorialize it and document or a calculation that shows how it was factored in, you have no evidence that they considered it; is that fair?
A. Well, I'm saying I didn't, I didn't see any -- there was no data suggesting that that was ever calculated.
Q. Right.
A. And it seems to me that would be a calculation.
Q. There was testimony that it was considered; right?
A. I think there was testimony that it was considered and as I mentioned in paragraph 54, though, there was testimony -- well, there was testimony I believe that said, oh, it was part of this, what we considered in some very broad abstract sense.
Q. Yep.

A. And then there was testimony as I note in paragraph 54 about potential kind of makeup losses, which I guess you could consider some kind of prior period adjustment. But in -- with an unrelated market not related to New York. So there's testimony that -- there's general testimony and then there's specific testimony.
Q. About consideration of prior period adjustments?
A. Yes.
Q. Okay. Got it. We're on the same page.
A. Okay.
Q. The period of time --
A. Uh-huh.
Q. -- that you looked at for rate setting procedures --
A. Uh-huh.
Q. -- goes from 2013 to 2021; right?
A. Yes. Broadly, yes.
Q. Broadly?
A. Yeah.
Q. Did you do any analysis of what other ESCOs charged in New York during that same time period?
A. No.
Q. Okay. So you don't know how XOOM's rates

compared to other ESCOs rates?
A. For purposes of this we never made a comparison.
Q. And you don't know if XOOM's rates were outside of the range of what ESCOs were charging during that time period?
A. No, we didn't look at that. It didn't seem very relevant.
Q. Okay. What was relevant in the, your damage analysis, was how much gross margin XOOM sought on top of its supply costs; right?
MR. WITTELS: Objection.
A. Can you repeat that, again.
Q. Yep. What you believed was relevant in your damage calculations was how much gross margin XOOM sought on top of its supply costs?
MR. WITTELS: Objection.
A. I mean, that's a way that -- I think you're putting a characterization of it. I think what really the -- you're characterizing it -- one might characterize it that way, but the, you know, as, as discussed, the, you know, what's important is the relationship between rates and, and supply costs. If you want to characterize that as being a gross margin calculation, I think you could formulate it that way,

which is I think what you're doing. But I think you understand what we did.
Q. I am, because I'm focusing in my question, I have built this in on your damage calculation. So I understand your position about bullet 3, let's call it. Which is your opinions about whether or not XOOM's rate setting was consistent or not, with the sale agreement.
But I'm talking about with respect to 4, after you concluded --
A. Uh-huh.
Q. -- the rate was not consistent --
A. Right.
Q. -- that your damage model --
A. Right.
Q. -- and what they considered relevant was the amount of gross margin that XOOM put on top of its supply cost?
A. Are we discussing the Method 1 model or the Method 2 model?
Q. Well, it's both; right?
A. Well, it's --
Q. Let's start with Method 1.
A. Okay. Right.
Q. Right. Method 1, what was relevant was the

amount of gross margin that's input on top of its supply costs; right?
MR. WITTELS: Objection.
A. Of the difference -- if you want to -- you're expressing that as a form -- you're expressing the delta, the difference, right, as a gross margin. That's not exactly how it was calculated.
I mean, it was calculated just as there's differences, not any -- you're saying a gross margin on a gross margin calc -- I want to be specific about how you're using the term "gross margin."
Q. I didn't think it was tricky. I mean, your report says that you calculated by reference -- by comparing XOOM's margin reports to XOOM's rate setting workbooks; right?
A. Right. I was getting to the delta between rates and costs.
Q. Okay.
A. It's just that it was in the margin setting workbooks.
Q. So with respect to Model 1 the relevant consideration was the delta between XOOM's total costs and XOOM's margin?
MR. WITTELS: Objection.

A. The -- between total cost and the rate.
Q. Okay. Which is the margin?
MR. WITTELS: Object.
A. The rate is not the margin.
Q. No, I know.
A. A rate is not a margin.
Q. The delta is. The delta is.
A. Okay. We can call that a margin, yes.
Q. The delta between the total costs --
A. Right.
Q. -- and the rate is --
A. Right.
Q. -- the margin; right?
A. That -- that -- you can characterize that as a margin.
Q. Well, what would you characterize it?
A. I would just characterize it as a difference, as a delta.
Q. Okay. You're not offering an opinion in this case that under the sales agreement XOOM could not charge more than the regulated utilities rate; right?
A. No. I mean, the comparison I made was between supply costs and the rate under this contract.
Q. Right. And you're not offering a damage model

that compares XOOM's variable rate charges to what customers would have been charged by the utility during the same time period?
MR. WITTELS: Objection.
A. No. The damage models as we discussed are the two.
Q. Right. And you don't intend to offer an opinion about that?
A. No. The only thing we used was a, as a graphical comparison on the relationship between supply costs and the utility rate, as an example. But the two models are the two models.
Q. Yep. Okay. Are you offering an opinion about what is a reasonable or appropriate margin for an ESCO to charge?
A. Well, to build the second model we needed an estimate of a margin. We really didn't have any information that would allow that to be created, since XOOM had, from what we can tell, had never done it that way. They had never tried to calculate a, or they did not present in any way, I can't say that they never tried. They did not present in the rate setting workbooks and other information calculations of any sort like that. So we used the margin from fixed rate

customers as a proxy of a rate that XOOM itself had used. I can't go further than that because there's no information.
MR. MATTHEWS: Can you read my question back, please.
(Prior testimony read back.)
"Are you offering an opinion about what is a reasonable or appropriate margin for an ESCO to charge?"
A. Yeah. Conceptually, yes. Conceptually, yes. Thanks for reading that back.
Q. That's okay. And what is the opinion that you're offering conceptually about that?
A. Well, I mean, it's obviously related to the contract that we've been discussing, whether it's based on supply costs, that, you know, if the Court were to decide that a margin was allowed, that it can't be an uncapped margin, that's why we made a second calculation using the fixed rate margin as a proxy of what might be an acceptable margin.
Q. Are you offering any opinion about what is an acceptable or appropriate, a reasonable margin aside from just using XOOM's fixed rate margin?

A. We haven't offered that opinion, we don't have any information to do that.
Q. Do you intend to?
A. If information were to be provided, but that would have to come from XOOM. So I, in the absence of not expecting anymore information to come, no.
Q. Well, we've gotten talking past each other again. I'm talking conceptually. You've said that it will be for the Court to decide whether a margin can be charged and if so what's appropriate; right?
A. Right.
Q. And if we go to trial --
A. Uh-huh.
Q. -- and you take the witness stand --
A. Uh-huh.
Q. -- and I'm asking you questions and the judge gets frustrated with my questions and says, "let's cut to the chase. Mr. Adamson, what do you think is an appropriate margin for an ESCO to charge?" What would your answer be?
MR. WITTELS: Objection.
A. I would say conceptually it's got to be related to the, related to the costs. And in a broad conceptual basis.

Q. And if he said, "but can you give me a cutoff point? Is there a number that you can assign to that?" Would you be able to give him one?
MR. WITTELS: Objection.
A. I wouldn't be able to give him a number on the stand because I wouldn't have the, XOOM's internal information, no.
Q. Okay. So the margin in your view, --
A. Uh-huh.
Q. -- the margin that is appropriate for an ESCO to charge conceptually --
A. Uh-huh.
Q. -- is ESCO specific?
A. Well, again, we're talking about relation to a specific contract, so.
Q. I'm not.
A. You're not.
MR. WITTELS: Don't interrupt him.
A. I am talking -- sorry. I'm talking about this specific contract. Other ESCOs may have, and I'm sure do, very different contractual forms. And in fact, ESCOs -- even the same ESCO will have lots, may have different pricing, right, under different arrangements. We're talking about variable rate pricing here as

opposed to fixed rate pricing.
Q. Uh-huh.
A. Fixed rate pricing, I think we can all agree, the actual outturn margins could be quite different. A lot depends on timing in that case; right? Okay. So I don't know that there is a "single ESCO number" I don't think that's a meaningful concept.
Q. Okay. Is there a single ESCO number for variable rates that in your opinion would be a cap on what is an appropriate or reasonable margin?
A. I don't have a number in mind because I don't know what the, what would be claimed to be the types of, of costs that, to be recovered in that margin. What I don't -- you know, I don't have a number. What I am offering is conceptually that the margin has to be based on something from reality to be meaningful in the context of this contract, and, you know, can't be arbitrary.
Q. Okay.
A. But I don't have a number to give you.
Q. Okay. And would not be able to create one?
MR. WITTELS: Objection.
A. Not -- not on the information available right now. I think that would need more inputs than are

Q. And -- okay. And I appreciate. I probably shouldn't use your defined term "total costs" because the supply costs doesn't include certain fixed costs; right? The supply costs that are set forth in the rate setting workbook.
A. I mean, the -- the total costs includes -- I mean, I -- what was reported as the things that sum up the total costs, yes.
Q. That sum up to the total of the supply costs; right?
A. Yeah. I think in the rate setting workbooks the column is labeled Total Cost, as I remember.
Q. Got it. But it doesn't include supply costs, and the total cost that's listed in the rate setting workbook doesn't include things like overhead and taxes and marketing costs. Those sorts of costs; right?
MR. WITTELS: Objection.
A. Sorry. I think your question may have had multiple parts. The total cost -- the total costs in the rate setting workbooks had a bunch of columns.
Q. Uh-huh.
A. Right? So is the -- is your question what are those columns?
Q. No. I probably asked a poor question.

ESCOs generally have supply costs; correct?
A. Yes.
Q. And then ESCOs, in the course of doing, running their business have certain additional costs that are not supply costs; right?
A. If you want to characterize it that way, yes.
Q. Okay. And the Model 1 calculation --
A. Uh-huh.
Q. -- does not include any costs that are not supply costs; right? The Model 1 calculation only calculates supply costs?
MR. WITTELS: That's two questions. Objection.
A. The Model 1 calculation uses, uses the supply costs represented by the total cost. As I understand your question you're saying did, for example, was, in the, in XOOM's reported total costs did it have these other elements he raised.
And I was trying to refer to to kind of purposes of clarity to say the rate setting workbook total costs that we saw -- well, I mean, they are what they are. That is XOOM's reported numbers. It didn't mention marketing costs. I think you mentioned that as a thing. So supply costs, yes. So we made a comparison with

supply costs based on total costs.
Q. The Total Cost column in the rate setting workbook?
A. Yes.
Q. Okay. And do you understand the Total Cost column in the rate setting workbook to include overhead costs?
A. Not as -- not as described. Not -- not as obviously described in the rate setting workbooks that I saw.
Q. Okay. Do you understand it to include taxes that XOOM pays?
A. Are we talking about corporate taxes or are we talking about taxes on, involving energy purchases or something?
Q. Corporate taxes.
A. Like, corporate income taxes?
Q. Yes.
A. Not that I see. Not that I saw.
Q. And do you understand it to include rent?
A. Like, facilities rent?
Q. Yes, sir.
A. There -- there was not a column for that, no.
Q. Okay. And do you understand it to include other

acquisition costs of acquiring customers?
A. If they -- that was not a broken out category.
Q. Okay. So in a nutshell under Model 1 you're calculating all of the gross margin that XOOM obtained from those customers?
MR. WITTELS: Objection.
Can you repeat that question.
(Prior testimony read back.)
"So in a nutshell under Model 1 you're calculating all of the gross margin that XOOM obtained from those customers?"
A. I mean, we're calculating the difference between total costs and rates times quantities. I think that's the calculation.
Q. Yeah. Okay. But under this model XOOM doesn't get to make any margin; correct?
A. Unless it was built into the total cost that they reported.
Q. In the rate setting workbook?
A. In the rate setting workbooks.
Q. Okay. XOOM's a for profit business; right? You understand that?
A. Yes.

A. Well, in a sense, yes, because the, you know -- well, first off, the fix rate is used as, you know, a way of coming up with a reasonable margin that, based on what XOOM itself set rates on. You know, it's not -- it's based on the information available.
So one question then comes to, you know, are, is there some reason that, that XOOM would need to charge a higher rate on fixed rate customers? If so I don't really see what it is.
MR. WITTELS: Variable.
A. Sorry. On variable rate customers. I am -- we don't have any information to, to delve into that.
Q. I'm asking conceptually. And it's okay if you are not offering this opinion. I'm not saying you should or you shouldn't be. I just want to know in this case are you going to offer an opinion that it is not fair for XOOM to seek a higher margin on variable rates conceptually than it does on fixed rates?
A. In this context, yes. Because there is no XOOM provided despite all of the information about how those methods were set of how these margins came up. How these -- how the variable rate margins were determined and that's a reasonable proxy, yes.
Q. Are you offering that opinion more broadly, that

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in all circumstances -- and I'm asking this, to give you some prospective on why I'm asking, because you've done it in two cases now that I know of, set the fixed rate margin as a benchmark.
A. Uh-huh.
Q. So are you going to offer the opinion that in the ESCO world --
A. Uh-huh.
Q. -- it is not appropriate for an ESCO to seek a higher margin for variable rates than it does for fixed rates?
MR. WITTELS: Objection.
A. I mean, to me the rates have to be set for the contract. The -- the use of fixed rates seemed appropriate for coming up with the reasonable proxy given that, you know, the, the risks associated with the variable rates in general would be similar or probably lower. If you say that there are other fixed costs it's hard to see why they are different. We never saw anything in this case saying, demonstrating why there would be a difference between the two. If someone could present, you know, compelling economic evidence that says, "by God, I can prove to you that the costs of variable rate is completely different than fixed rate"

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that might be a thing. But we -- we haven't seen that here. It was asked, but we haven't seen it.
Q. Who asked?
A. Well, the discovery request asked for costs and pricing methodologies and stuff.
Q. Paragraph 75. It says -- this is towards the bottom, I suppose it's the last sentence.
"It appears that XOOM was able to operate and make a reasonable profit selling fixed rate contracts with substantially lower margins than variable contracts, and yet arbitrarily imposed much higher margins on their variable rate customers?"
Do you see that?
A. Yes.
Q. Where does it appear that XOOM was able to operate and make a reasonable profit selling fixed rate contracts with substantially lower margins?
A. Well, the margins you can kind of see in the table, the average margins over years. As I say, it appears that they chose to offer those fixed rate margins over a considerable period of time.
Q. Uh-huh.
A. So they would have had -- XOOM would have had the opportunity to offer if it was saying, "oh, my God,

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we're losing tons of money on all of our variable customers -- I mean, our fixed rate plans that could have been adjusted."
But we don't -- as I mentioned before we don't have contract by contract P & Ls, for example.
Q. Right. So I think we're saying the same thing. Your table 1 reflects gross margin for fixed rate customers; right?
A. Yes.
Q. Okay.
A. I think so, yes.
Q. But you don't know whether --
VIDEOGRAPHER: I'm sorry. I didn't hear that. You're hitting the microphone.
A. Oh, I'm sorry.
VIDEOGRAPHER: Bring it up a little higher.
A. How is that? Is that better?
VIDEOGRAPHER: Great. Thank you.
A. Okay. Thank you. Sorry.
Q. That's okay. But you don't know if XOOM actually made a net profit on those same customers?
A. No, we don't have -- we don't have customer segment level profit and loss data.
Q. Okay. In the -- circling back to the Richards

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their retail business.
Q. Okay. Well, I guess --
A. For example, a bunch of the Texas companies have retail supply businesses. We did a little bit on that, but not a major thing. But a bunch of the Texas companies had retail supply businesses that also had substantial other businesses.
Q. I think I understand what you're saying. And you didn't work for the retail side of their businesses, you worked for the other side of their businesses?
A. Or sometimes we would be hired on some kind of corporate strategy type engagement, which might be pretty broad.
Q. Got it. Okay. I thank you for your time and your patience with me.
MR. MATTHEWS: I'll pass the witness.
A. Thank you.
Q. Yes, sir.

EXAMINATION

BY MR. WITTELS:
Q. Mr. Adamson, I just really have one question for you. You were asked by counsel for XOOM about whether

the company was able to make any profits on its fixed rate customers; do you remember that question?
A. Yeah. Not in exact wording, but I remember the question.
Q. Yeah. And did you ask me to, whether you could go back and review your report when we had a break?
A. Yeah, well -- yes, we were discussing the report.
Q. And did you reread paragraph 57?
A. Yes.
Q. And does that answer the question of whether XOOM made money and was profitable on its fixed rate customers?
MR. MATTHEWS: Objection. Leading.
A. Well, I just -- it just reminded me there was a -- I had said that there was not a specific P&L, this was a reference in the report to deposition testimony from a XOOM witness about the profitability of this.
Q. And what did your report find and state?
A. I don't remember exactly how he worded it. I think there had been a, in the deposition there was a question about, it was around, I don't have the transcript in front of me, of course, of the deposition, but it was something around the line of were -- were a fixed rate -- were fixed rate customers profitable for

XOOM or some broad question.
Q. And the answer was?
A. I believe he said yes, they were, they were both profitable. Both fixed rate and variable rate were profitable.
Q. Okay. I have no further questions at this time. Thanks.
MR. MATTHEWS: Thanks very much.
A. Thank you.
VIDEOGRAPHER: The time is 2:39, we are off the record.
COURT REPORTER: And, Mr. Matthews, your order?
MR. MATTHEWS: My order is an expedited transcript, just, I don't need any print copies. Electronic only. PDF exhibits.
COURT REPORTER: Expedite by Friday?
MR. MATTHEWS: Yes.
(Whereupon, the deposition concluded at approximately 2:39 p.m.)

CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK, ss.

I, Laurie Langer, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am neither related to or employed by any of the parties in or counsel to this action, nor am I financially interested in the outcome of this action.

In witness whereof, I have hereunto set my hand and seal this 11th day of November, 2022.

NOTARY PUBLIC
Commission Expires
7/27/2023